

**CITY OF MARATHON, FLORIDA  
RESOLUTION 2011-13**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING WORK AUTHORIZATION # 41 TO THE CONTINUING SERVICES CONTRACT DATED JUNE 23, 2004, WITH WEILER ENGINEERING CORPORATION FOR THE DESIGN OF THE FORCE MAIN AND THE PUMP STATION UPGRADES NECESSARY TO ALLOW THE SERVICE AREA 1 FLOWS TO BE CONVEYED TO THE SERVICE AREA 3 WWTP AND ASSOCIATED CONSTRUCTION MANAGEMENT IN AN AMOUNT NOT TO EXCEED \$151,270; AUTHORIZING THE CITY MANAGER TO EXECUTE THE CHANGE ORDER AND EXPEND BUDGETED FUNDS ON BEHALF OF THE CITY; AND PROVIDING FOR AN EFFECTIVE DATE**

**WHEREAS**, the City of Marathon (“City”) has a Continuing Services Agreement with Weiler Engineering Corporation (“Weiler”); and

**WHEREAS**, the City desires to issue a Work Authorization to Weiler in an amount not to exceed \$151,270.00 to design force main and pump station upgrades necessary to allow the Service Area 1 wastewater flows to be conveyed to the Service Area 3 wastewater treatment plant.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THAT:**

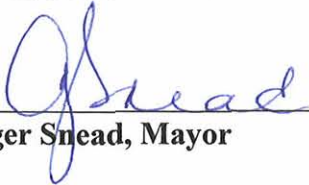
**Section 1.** The above recitals are true and correct and incorporated herein.

**Section 2.** Work Authorization No.41 between the City and Weiler to design force main and pump station upgrades necessary to allow the Service Area 1 wastewater flows to be conveyed to the Service Area 3 wastewater treatment plant, a copy of which is attached hereto as Exhibit “A,” together with such non-material changes as may be acceptable to the City Manager and approved as to form and legality by the City Attorney is hereby approved. The City Manager is authorized to execute the Work Authorization on behalf of the City, and expend budgeted funds.

**Section 3.** This resolution shall take effect immediately upon its adoption.

**PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS 22<sup>nd</sup> DAY OF FEBRUARY, 2011.**

**THE CITY OF MARATHON, FLORIDA**

  
\_\_\_\_\_  
**Ginger Snead, Mayor**

AYES:           Cinque, Keating, Ramsay, Worthington, Snead  
NOES:           None  
ABSENT:       None  
ABSTAIN:      None

**ATTEST:**

  
\_\_\_\_\_  
Diane Clavier, City Clerk

(City Seal)

**APPROVED AS TO FORM AND LEGALITY FOR THE USE AND RELIANCE OF THE CITY OF MARATHON, FLORIDA ONLY:**

  
\_\_\_\_\_  
City Attorney

**EXHIBIT "A"**

**PROJECT AGREEMENT**

Between

CITY OF MARATHON, FLORIDA

And

WEILER ENGINEERING CORPORATION

for

Work Authorization No. 41

Area 1 Force Main and Pump Station Upgrade - Design, Permitting  
Bidding Assistance and Construction Engineering / Inspection Services

PROJECT AGREEMENT  
Between

THE CITY OF MARATHON, FLORIDA

And

WEILER ENGINEERING CORPORATION

For

Work Authorization No. 41

Area 1 Force Main and Pump Station Upgrade - Design, Permitting, Bidding Assistance and Construction Engineering/Inspection Services

Pursuant to the provisions contained in the "Continuing Services Agreement" between the CITY OF MARATHON, FLORIDA (the "CITY") and THE WEILER ENGINEERING CORPORATION, ("ENGINEER") dated June 23, 2004, this Project Agreement authorizes the ENGINEER to provide the services as set forth below:

The CITY and ENGINEER agree as follows:

**SECTION 1. SCOPE OF SERVICES**

1.1 The ENGINEER shall provide engineering services to the CITY for the Project as described in the "Project Description" attached as Exhibit "1."

1.2 The "Scope of Services and Project Schedule" and tasks to be provided by the ENGINEER for this Project are those services and tasks as listed in Exhibit "2."

1.3 The CITY may request changes that would increase, decrease, or otherwise modify the Scope of Services. Such changes must be contained in a written change order executed by the parties in accordance with the provisions of the Continuing Services Agreement, prior to any deviation from the terms of the Project Agreement, including the initiation of any extra work.

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## **SECTION 2. DELIVERABLES**

As part of the Scope of Services and Project Schedule, the ENGINEER shall provide to the CITY the following Deliverables:

- Design a force main to convey sewage from the Service Area 1 pump station to the Service Area 3 WWTP, including points of connection for larger users along the US 1 corridor. Prepare all necessary permit applications, including but not limited to FDEP and FDOT permits. Permit application fees are not included in the lump sum price of this Work Authorization. Prepare bidding documents and construction documents.
- Design upgrades necessary to the Service Area 1 pump station to deliver sewage to the Area 3 WWTP. Prepare all necessary permit applications, including but not limited to FDEP and FDOT permits. Permit application fees are not included in the lump sum price of the this Work Authorization. The bidding documents and construction documents for the Pump Station Upgrade will be combined with the documents for the Force Main.
- Assist CITY with bidding process including pre-bid meeting, response to bidder's requests for information, addenda, bid opening, bid evaluation and recommendation of award.
- Construction Phase services\* include attending the pre-construction meeting and subsequent construction progress meetings, daily period inspections to ensure compliance with the requirements of the contract documents and relevant permit conditions, review of shop drawing and submittals, processing of application for progress payment from the contractor, responses to RFIs from the contractor, and preparation of change orders, certifications and other construction phase documentation.

\* The expected duration of the construction phase of this project is 90 days to Substantial Completion. If, through no fault of the Engineer, the construction phase extends longer, the Engineer may be entitled to negotiate additional fees for construction phase services.

## **SECTION 3. TERM/TIME OF PERFORMANCE/DAMAGE**

3.1 **Term.** This Project Agreement shall commence on the date this instrument is fully executed by all parties and shall continue in full force and effect until completion of the project, or until two years have elapsed, unless otherwise terminated pursuant to Section 4 or other applicable provisions of this Project Agreement. The City Manager, in his sole discretion, may extend the term of this Agreement through written notification to the ENGINEER. Such extension shall not exceed 180 days. No further extensions of this Agreement shall be effective unless authorized by the CITY Council.

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3.2 **Commencement.** The ENGINEER'S services under this Project Agreement and the time frames applicable to this Project Agreement shall commence upon the date provided in a written Notification of Commencement ("Commencement Date") provided to the ENGINEER from the CITY. The ENGINEER shall not incur any expenses or obligations for payment to third parties prior to the issuance of the Notification of Commencement. ENGINEER must receive written notice from the City Manager prior to the beginning the performance of services.

3.3 **Contract Time.** Upon receipt of the Notification of Commencement, the ENGINEER shall commence services to the CITY on the Commencement Date, and shall continuously perform services to the CITY, without interruption, in accordance with the time frames set forth in the "Project Schedule," a copy of which is attached and incorporated into this Agreement as Exhibit "3". The number of calendar days from the Commencement Date, through the date set forth in the Project Schedule for completion of the Project or the date of actual completion of the Project, whichever shall last occur, shall constitute the Contract Time.

3.4 **Liquidated Damages.** Unless otherwise excused by the CITY in writing, in the event that the ENGINEER fails to meet to the contract time for completion of services as determined by the Project Schedule, the ENGINEER shall pay to the CITY the sum of dollars identified below per day for each and every calendar day unexcused delay beyond the completion date, plus approved time extensions, until completion of the project: \$       N/A       per day. The ENGINEER may claim extension if the factors involved are not under their direct control.

Any sums due and payable hereunder by the ENGINEER shall be payable, not as a penalty, but as liquidated damages representing and estimate at or before the time of executing this Agreement. When the CITY reasonably believes that completion will be inexcusably delayed, the CITY shall be entitled, but not required, to withhold from any amounts otherwise due the ENGINEER an amount then believed by the CITY to be adequate to recover liquidated damages applicable to such delays. If and when the ENGINEER overcomes the delay in achieving completion, or any part thereof, for which the CITY has withheld payment, the CITY shall promptly release to the ENGINEER those funds withheld, but no longer applicable, as liquidated damages.

3.5 All limitations of time set forth in this Agreement are of the essence.

#### **SECTION 4. AMOUNT, BASIS AND METHOD OF COMPENSATION**

4.1 **Lump Sum Compensation.** CITY agrees to pay ENGINEER as compensation for performance of all services described in Exhibit "2" **\$151,270.00** ~~FOR, IF HOURLY, "CITY AGREES TO PAY CONSULTANT COMPENSATION AT CONSULTANT'S HOURLY RATES, UP TO A MAXIMUM AMOUNT NOT TO EXCEED \$\_\_\_\_\_."~~

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4.2 **Reimbursable Expenses.** The following expenses are reimbursable at their actual cost: travel and accommodations, long distance telephone calls, facsimile, courier services, mileage (at a rate approved by the CITY), photo and reproduction services. All document reproductions are also reimbursable, at a rate approved by the CITY.

## **SECTION 5. BILLING AND PAYMENTS TO THE ENGINEER**

### **5.1 Invoices**

5.1.1 **Lump Sum Compensation and Reimbursable Expenses.** ENGINEER shall submit invoices which are identified by the specific project number on a monthly basis in a timely manner. These invoices shall identify the nature of the work performed, the phase of work, and the estimated percent of work accomplished in accordance with the Payment Schedule set forth in Exhibit "3", to this Project Agreement. Invoices for each phase shall not exceed amounts allocated to each phase of the Project plus reimbursable expenses accrued during each phase. The statement shall show a summary of fees with accrual of the total and credits for portions previously paid by the CITY. The CITY shall pay ENGINEER within thirty (30) calendar days of approval by the City Manager of any invoices submitted by ENGINEER to the CITY.

5.2 **Disputed Invoices.** In the event that all or a portion of an invoice submitted to the CITY for payment to the ENGINEER is disputed, or additional backup documentation is required, the CITY shall notify the ENGINEER within fifteen (15) working days of receipt of the invoice of such objection, modification or additional documentation request. The ENGINEER shall provide the CITY with additional backup documentation within five (5) working days of the date of the CITY'S notice. The CITY may request additional information, including but not limited to, all invoices, time records, expense records, accounting records, and payment records of the ENGINEER. The CITY, at its sole discretion, may pay to the ENGINEER the undisputed portion of the invoice. The parties shall endeavor to resolve the dispute in a mutually agreeable fashion.

5.3 **Suspension of Payment.** In the event that the CITY becomes credibly informed that any representations of the ENGINEER, provided pursuant to Subparagraph 5.1, are wholly or partially inaccurate, or in the event that the ENGINEER is not in compliance with any term or condition of this Project Agreement, the CITY may withhold payment of sums then or in the future otherwise due to the ENGINEER until the inaccuracy, or other breach of Project Agreement, and the cause thereof, is corrected to the CITY'S reasonable satisfaction.

5.4 **Retainage.** The CITY reserves the right to withhold retainage in the amount of ten percent (10%) of any payment due to the ENGINEER for the design until the design is completed. Said retainage may be withheld at the sole discretion of the City Manager and as

security for the successful completion of the ENGINEER'S duties and responsibilities under the Project Agreement.

5.5 **Final Payment.** Submission of the ENGINEER'S invoice for final payment and reimbursement shall constitute the ENGINEER'S representation to the CITY that, upon receipt from the CITY of the amount invoiced, all obligations of the ENGINEER to others, including its ENGINEERS, incurred in connection with the Project, shall be paid in full. The ENGINEER shall deliver to the CITY all documents requested by the CITY evidencing payments to any and all subcontractors, and all final specifications, plans, or other documents as dictated in the Scope of Services and Deliverable. Acceptance of final payment shall constitute a waiver of any and all claims against the CITY by the ENGINEER.

## **SECTION 6. TERMINATION/SUSPENSION**

6.1 **For Cause.** This Project Agreement may be terminated by either party upon five (5) calendar days written notice to the other party should the other party fail substantially to perform in accordance with its material terms through no fault of the party initiating the termination. In the event that ENGINEER abandons this Project Agreement or causes it to be terminated by the CITY, the ENGINEER shall indemnify the CITY against any loss pertaining to this termination. In the event that the ENGINEER is terminated by the CITY for cause and it is subsequently determined by a court by a court of competent jurisdiction that such termination was without cause, such termination shall thereupon be deemed a termination for convenience under Section 6.2 of this Project Agreement and the provision of Section 6.2 shall apply.

6.2 **For Convenience.** This Project Agreement may be terminated by the CITY for convenience upon fourteen (14) calendar days' written notice to the ENGINEER. In the event of termination, the ENGINEER shall incur no further obligations in connection with the Project and shall, to the extent possible, terminate any outstanding sub ENGINEER obligations. The ENGINEER shall be compensated for all services performed to the satisfaction of the CITY and for reimbursable expenses incurred prior to the date of termination. The ENGINEER shall promptly submit its invoice for final payment and reimbursement and the invoice shall comply with the provisions of Paragraph 5.1 of this Project Agreement. Under no circumstances shall the CITY make any payment to the ENGINEER for services which have not been performed.

6.3 **Assignment upon Termination.** Upon termination of this Project Agreement, a copy of all of the ENGINEER's work product shall become the property of the CITY and the ENGINEER shall, within ten (10) working days of receipt of written direction from the CITY, transfer to either the CITY or its authorized designee, a copy of all work product in its possession, including but not limited to designs, specifications, drawings, studies, reports and all other documents and data in the possession of the ENGINEER pertaining to this Project Agreement. Further, upon the CITY'S request, the ENGINEER shall assign its rights, title and interest under any subcontractor's agreements to the CITY.

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6.4 **Suspension for Convenience.** The CITY shall have the right at any time to direct the ENGINEER to suspend its performance, or any designated part thereof, for any reason whatsoever or without reason, for a cumulative period of up to thirty (30) calendar days. If any such suspension is directed by the CITY, the ENGINEER shall immediately comply with same. In the event the CITY directs a suspension of performance as provided for herein through no fault of the ENGINEER, the CITY shall pay to the ENGINEER its reasonable costs, actually incurred and paid, of demobilization and remobilization, as full compensation for any such suspension.

**SECTION 7. INCORPORATION OF TERMS AND CONDITONS OF CONTINUING SERVICE AGREEMENT**

7.1 This Project Agreement incorporates the terms and conditions set forth in the Continuing Services Agreement dated June 23, 2004 between the parties as though fully set forth herein. In the event that any terms or conditions of this Project Agreement conflict with the Continuing Services Agreement, the provisions of this specific Project Agreement shall prevail and apply.

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ATTEST:

CITY OF MARATHON

Marie Clavie  
City Clerk

By: R. Hernstadt  
Roger Hernstadt City Manager

Date: 3-3-11

APPROVED AS TO FORM AND LEGALITY FOR THE USE  
AND RELIANCE OF THE CITY OF MARATHON, FLORIDA ONLY:

[Signature]  
City Attorney

ATTEST:

WEILER ENGINEERING CORPORATION

By: Edward R. Castle  
Edward R. Castle, Vice President

Date: 2/23/11

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## **Exhibit "1"**

### **Project Description**

The City has elected to exercise the option of constructing a force main that will convey sewage from the Service Area 1 pump station to the Service Area 3 WWTP in lieu of constructing a wastewater treatment plant within Service Area 1. It is understood that the capacity of the Service Area 3 plant included excess capacity for future growth, and that some of this capacity will be used by the connection of Service Area 1 to the Service Area 3 WWTP. The intent is to provide service for the existing developed properties in Service Area 1 until such time that the Knights Key Campground property is redeveloped, at which time additional treatment capacity will need to be provided.

The scope of work for this Work Authorization includes the design of the force main and the pump station upgrades necessary to allow the Service Area 1 flows to be conveyed to the Service Area 3 WWTP. The Engineer will produce permitting, bidding and construction documents and will assist the City with bidding the project.

Construction phase services are also included in this Work Authorization. The Engineer will administer the construction contract on behalf of the City and will provide periodic inspections to ensure that the conditions of the contract documents and relevant permits are met. The services will include review and approval of shop drawings and other submittals, responses to Contractor-generated RFIs, attendance at construction progress meetings and project closeout. Certifications of Substantial and Final Completion, certifications and reports to regulatory agencies and review of Contractor-provided Record Drawings are included in the scope.

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## Exhibit "2"

### Scope of Services and Project Schedule

#### Design and Permitting –

A. In the Study and Report Phase, the ENGINEER will use available record drawings, surveys, geotechnical explorations and utility locates to prepare a proposed force main layout. Hydraulic modeling will be performed to properly size the force main piping. The ENGINEER will include propose points of connection along the force main that would allow certain larger users along the US 1 corridor the option of pumping into the force main in lieu of connecting to the vacuum system, if the CITY so desires. The Study and Report Phase will be completed within 45 calendar days of the Notice of Commencement.

B. Concurrently with the Study and Report Phase, the ENGINEER will begin production of the design drawings, setting up the sheets and installing all known data onto the drawings. Initially, plan view drawing will be produced, and after verification of the force main layout, detailed design of the force main will proceed. Concurrently, the design of the upgrade of the pump station will be underway. After reaching approximately the 80% design stage, the permit applications for the FDEP collection/transmission system permit and the FDOT utility permit will be prepared and submitted. The bid documents will be prepared simultaneously. The permitting and bidding documents will be completed within 90 days of the Notice of Commencement. Permit issuance is dependent upon the review of the permitting agencies.

C. ENGINEER's services under the Final Design Phase will be considered complete on the date when the final bidding/construction plan sets, specifications, contract documents and final construction cost estimates have been delivered to CITY.

#### Bidding Assistance

A. After acceptance by CITY of the Bidding Documents and the final opinion of probable Construction Costs as determined in the Final Design Phase and upon written authorization by CITY to proceed, ENGINEER, shall:

1. Assist CITY in advertising for and obtaining bids for the Work.
2. Conduct a pre-bid conference.
3. Issue Addenda as appropriate to clarify, correct, or change the Bidding Documents and to respond to questions from prospective bidders.

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4. Consult with CITY as to the acceptability of subcontractors, suppliers, and other individuals and entities proposed by Contractor for those portions of the Work as to which such acceptability is required by Bidding Documents.

5. Attend the bid opening,

6. Develop a tabulation of bids, review all submitted bids for responsiveness,

7. Review the low bidder for responsibility and review their references until a bidder is selected. With the review of the CITY's legal council, Weiler will provide a written Recommendation of Award to the CITY.

B. The bidding Phase will be considered complete upon the CITY receiving the written recommendation of an award.

### **Construction Engineering and Inspection Services**

A. The construction project shall be administered by the Engineer on behalf of the CITY. Pre-construction meetings, construction progress meetings, review of shop drawings and applications for payment and other construction phase services will be performed by the ENGINEER with approval by the CITY. The ENGINEER will provide responses to requests for information or clarification in relation to the project documents and will provide general advice to the CITY regarding the construction project. Project close-out and certifications will be prepared by the ENGINEER for execution by the CITY and CONTRACTOR.

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**EXHIBIT "3"**

**Payment Schedule**

Progress payments will be made based on the percentage completion of the tasks defined below. Invoices for payment will be submitted on a monthly basis.

Study and Report.....	\$16,500.00
Design Drawings, and Submittal of permit applications for entire project,..... Perparaton of bid documents	\$56,960.00
Bidding Assistance from Advertising through Recommendation..... of Award (U.S. Highway 1 to Avenue G	\$ 4,125.00
Construction Engineering and Inspection .....	\$64,445.00
GPS Data Collection and Post Processing .....	\$ 6,490.00
Reimbursable Expenses.....	\$ 2,750.00
<b>TOTAL.....</b>	<b>\$151,270.00</b>

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**EXHIBIT "B"**

**PAGE 1 OF 2**

**ENGINEER'S BILLING RATE**

**THE WEILER ENGINEERING CORPORATION**

Principal .....	\$ 125.00
Project Manager .....	\$ 105.00
Professional Structural Engineer.....	\$ 105.00
Registered Professional Engineer .....	\$ 105.00
Professional Civil Engineer .....	\$ 105.00
Professional Landscape Architect.....	\$ 95.00
Registered Engineer Intern (E.I.T.).....	\$ 95.00
Senior Engineering Designer .....	\$ 85.00
Construction Inspector .....	\$ 65.00
Engineering Technician .....	\$ 75.00
Clerical .....	\$ 35.00
Reimbursable Expenses	
Blueprints .....	\$ 2.30
Vellums .....	\$ 10.00(24 x 36 sheet)
Mylars .....	\$ 25.00(24 x 36 sheet)
Travel .....	Cost
(Travel outside of County)	
Overnight mail .....	Cost

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**EXHIBIT “B”**

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**GENERAL DESCRIPTION OF EMPLOYEE CATEGORIES**

**R. Jeff Weiler, P.E., President** - Mr. Weiler is a Professional Engineer registered in the State of Florida. He is the President of The Weiler Engineering Corporation.

**Edward R. Castle, P.E., Vice President - Wastewater Department Manager** – Mr. Castle is a Professional Engineer registered in the State of Florida. He will be the Engineer in Responsible Charge for this project.

**Serge Mashtakov, P.E., Project Manager** – Mr. Mashtakov will be the Project Engineer and for this project.

**Nancy Brooking, Senior Designer** – Ms. Brooking will be the Senior Designer and permitting specialist on this project

**Justin Stensland, Engineering Designer** – Mr. Stensland will be the construction project manager on this project.

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